

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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MARC POSTELL,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v	:	NO. 11-2220
	:	
CITY OF PHILADELPHIA, POLICE	:	
OFFICER KALIV IVY, LIEUTENANT	:	
GEORGE HOLCOMB, and JOHN DOE,	:	
	:	
Defendants.	:	
	:	

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**MEMORANDUM**

Presently before the Court is a Motion for Leave to Amend the Complaint filed by Plaintiff Marc Postell (“Plaintiff”), to which Defendants City of Philadelphia, Police Officer Kaliv Ivy, and Lieutenant George Holcomb (Defendants) have not responded. For the reasons below, the Motion is granted.

Plaintiff’s original Complaint was filed on March 29, 2011. Relying upon federal and state law, Plaintiff alleges that Defendants, including the unnamed “John Doe” Defendant, violated 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments for purportedly using excessive force during an altercation on or about May 1, 2010. See Compl. On October 21, 2011, Plaintiff filed his Motion for Leave to Amend the Complaint in order to provide the identity of the “John Doe” Defendant as Police Officer Khalil Nock (“Nock”), and to include specific factual allegations in support of his claims against Nock. (Pl.’s Mot. to Am. Compl. ¶¶ 1-7.) Plaintiff claims that the identity of Nock was revealed during the discovery process, and the new assertions against him relate back to the filing of the original Complaint. (Pl.s’ Mem.

Law Support Mot. to Am. Compl. at 2-3.) In seeking to include Nock, Plaintiff's Amended Complaint adds Nock's name replacing "John Doe" Defendant, and includes a new paragraph alleging that Nock told Plaintiff, after Police Officer Kaliv Ivy's alleged assault, "[y]ou are lucky we are not highway patrol, we would have beaten you up and left you somewhere." (Id.; Ex. A, Am. Compl. ¶ 22.) As of today's date, which is well beyond the 14 day time-period in which to file a response, Defendants have not filed any response. See E.D. Pa. R. Civ. P. 7.1(c).

Pursuant to Local Rule of Civil Procedure 7.1(c), a district court may, in the absence of a timely response, grant a motion as uncontested. Id. Since Defendants have failed to respond in any manner, we consider Plaintiff's motion as uncontested, and grant Plaintiff's Motion for Leave to Amend the Complaint pursuant to Local Rule of Civil Procedure 7.1(c).

Even if Defendants responded to Plaintiff's Motion, Plaintiff's request to for leave to amend his Complaint is nevertheless warranted pursuant to Federal Rule of Civil Procedure 15(a). See Fed. R. Civ. P. 15(a). Rule 15(a) provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. . . . Otherwise a party may amend the party's pleading only by leave of the court or by written consent if justice so requires." Fed. R. Civ. P. 15(a). Plaintiff must seek this Court's permission to amend pursuant to Rule 15(a) because Defendants already filed a responsive pleading.

The U.S. Court of Appeals for the Third Circuit holds that leave to amend should be granted liberally. Alvin v. Suzuki, 227 F.3d 107, 121 (3d Cir. 2000). It should only be denied in circumstances in which a "plaintiff's delay in seeking amendment is undue, made in bad faith, prejudicial to the opposing party, or [the amendment] fails to cure the jurisdictional defect."

Alvini, 227 F.3d at 121 (quoting Berkshire Fashions, Inc. v. M.V. Hauksan II, 954 F.2d 874, 886 (3d Cir. 1992)). Since none of these factors precluding amendment are present in the instant case, and it appears that Nock was deposed regarding this lawsuit on October 18, 2011, we find that Plaintiff's request to amend his Complaint is proper pursuant to Fed. R. Civ. P. 15(a).<sup>1</sup> Accordingly, Plaintiff's Motion for Leave to File an Amended Complaint is **GRANTED**.

An appropriate Order follows.

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<sup>1</sup> The Uncontested Motion to Extend Discovery Deadline filed by the parties states that “[t]he depositions of Plaintiff, Marc Postell, Defendant Lt. George Holcomb, and Police Officer Khalil Nock were taken on October 18, 2011.” (Uncontested Mot. to Extend Discovery ¶ 3.)

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GEORGE HOLCOMB, and JOHN DOE,	:	
	:	
Defendants.	:	
	:	

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**ORDER**

**AND NOW**, this 18th day of November, 2011, upon consideration of Plaintiff's Motion for Leave to Amend the Complaint (Doc. No. 8), and having received no response from Defendants, it is hereby **ORDERED** that said motion is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to substitute Khalil Nock for "John Doe" on the docket.

BY THE COURT:

/s/ Robert F. Kelly  
ROBERT F. KELLY  
SENIOR JUDGE